

FORFEITURE LAWS ENCOURAGE POLICING FOR PROFIT

Busted: A Narrative From The Drug War

by Charmie Gholson

ED BOYKE, a former General Motors employee who served in the Navy, became disabled in 1996 after undergoing two brain surgeries due to a tumor and epilepsy.

Boyke was approved for medical marijuana due to severe sciatica due to a pinched nerve. He was diagnosed by the Mayo clinic in Minnesota and is a caregiver for himself and for one additional patient.

On April 15, Boyke stepped outside of his Saginaw Township home and was surrounded by Saginaw County Sheriff's deputies and U.S. DEA Agents. With weapons drawn, they served Boyke with a federal warrant to search his residence, based on confidential information that he had violated marijuana laws. They handcuffed Boyke while they executed the warrant.

The DEA agents surveyed his home, said they wouldn't pursue the case and left. The Saginaw County sheriffs department stayed to "see if he'd broken any state laws," and according to Boyke, "started tearing the place apart." They smashed his grow operation and a humidifier, dumped out dresser drawers and emptied closets in two rooms. They taunted him about who he voted for in the last presidential election.

When they left, they took two lawn mowers, a leaf blower, an air compressor and generator from his garage, his 2008 Chevy Impala, \$62 from his wallet, his marijuana plants, hunting rifles and ammo, his harvested marijuana, Boyke's medical marijuana card and paperwork, a generator, a paint sprayer, a dehumidifier, weighing apparatuses, scales and a 42-inch Panasonic TV. "They asked me for the key



Ed Boyke stands defiant against the abuse of civil asset forfeiture.

to my girlfriend's car too, but I didn't have it," he says. "They told me I was lucky 'cause they would have taken that too."

The deputies returned the next day and asked Boyke how much money he had.

"When they came back the next day threatening to take a lien on my house, I called this one lawyer, Tom Frank in Saginaw and asked him about the \$5,000 they wanted from me. He said, 'I'll run over and talk to them.'" Boyke said Frank didn't call him back; instead the detectives called and asked if he had the money. "I was worried because they were threatening to take my house," he says. "That Sheriff said 'Make sure it's cash, then we'll bring your stuff back.'"

Boyke gave them \$5,000 in cash, and they returned his car, the lawn mowers, leaf blower and air compressor but they didn't return his TV or rifles. He says everything except the car was old junk

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from the garage. One of the rifles, however, was a present and heirloom. Boyke's wife passed away at the age of 36 and the rifle had been a gift from her father. He says he pleaded with the department to return, "just that rifle, but they told me, 'Your guns are gone.'"

"They didn't give me a receipt," he says. "I had to go down and get that myself." The receipt is for storage and impound charges.

Michigan forfeiture laws require contesting property owners to file a claim with the county clerk within 20 days of a seizure, a copy of the claim with the prosecutor's office, and pay a bond, ranging between \$250 and \$5,000, which is reimbursed if they appear in court. When Boyke learned this, and after reading in the paper that he had received legal advice prior to paying his "Impound and storage" charges, he was furious. He hadn't received legal advice. He drove to Franks' office.

"Frank told me he didn't tell the sheriff he was my lawyer," Boyke says, "but Frank could have told me I had twenty days, the detectives could have told me, I would have disputed it, but they didn't tell me shit. I don't know those laws, I'm not a lawyer, and that lawyer never called me back."

Saginaw County Sheriff's Detective Sgt. Randy F. Pfau told the Saginaw Times that no one forced Boyke to pay for the return of the items. Property owners "have every right to take it to a formal hearing with a judge," Pfau said. "By coming in and paying that \$5,000, he's waiving that right."

Saginaw County Sheriff William L. Federspiel says medical marijuana users are not his department's targets. "I wish we could just say, 'Hey, this guy's got a card, don't even bother with it,' but unfortunately we don't have that option,"

Federspiel told The Saginaw News. "So we follow through, because you know what, it's still against the law, unless you have the medical marijuana card."

But Boyke did have a medical marijuana and caregiver card, until police confiscated it during the raid.

Pfau also said it is department protocol for deputies to destroy or seize all marijuana-growing related items when they perform a search or seizure at a suspected grow operation.

Federspiel maintains the department's investigation indicated Boyke was in violation of the law, illegally possessed marijuana and was thereby subject to forfeiture law. To date, however, Boyke has not been charged with any crime. According to Michigan state forfeiture laws, he may never be.

GUILTY UNTIL PROVEN INNOCENT

Michigan's civil asset forfeiture laws are some of the most egregious in the country. In March 2010, The Institute for Justice released *Policing for Profit: The Abuse of Civil Asset Forfeiture*, the most comprehensive national study to examine the use and abuse of civil asset forfeiture, and the first study to grade the civil forfeiture laws in all 50 states and the federal government. Only three states receive a B or better. Michigan received the lowest score possible: D-

Americans are supposed to be innocent until proven guilty, but civil forfeiture turns that principle on its head. With civil forfeiture, your property is guilty until you prove it innocent.

The report chronicles how state and federal laws leave innocent property owners vulnerable to forfeiture abuse. These laws encourage law enforcement to take property to boost their budgets. The report finds that by giving law enforcement a direct financial stake in forfeiture efforts, most state and federal laws encourage

policing for profit, not justice.

In Michigan, law enforcement receives all proceeds of civil forfeiture to enhance law enforcement efforts, creating an incentive to pursue forfeiture more vigorously than combating other criminal activity. The report says Michigan multi-jurisdictional task forces work extensively with district attorneys and police departments to forfeit property, resulting in more than \$149 million in total forfeiture revenue from 2001 to 2008.

Americans accused of using drugs have much to fear from informants, such as the "concerned citizen" that tipped police to Ed Boyke's "illegal activity." As forfeiture laws allow police to seize more and property from anyone merely accused of drug activity.

In 2007, Saginaw Sheriff's and Prosecutors reported earning \$53,797 net proceeds from their multi-jurisdictional drug task forces, like the ones who raided Boyke. 2008 proceeds totaled \$75,598.